



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

5 POST OFFICE SQUARE SUITE 100

BOSTON, MASSACHUSETTS 02109-3912

JUL 05 2016

David Ferris, Director
MA Wastewater Management Program
Bureau of Water Resource
MA Department of Environmental Protection
One Winter Street
Boston, MA 02108

RE: Water Quality Certification for NPDES Permit: MA0003557 Pilgrim Nuclear Power Station

Dear Mr. Ferris,

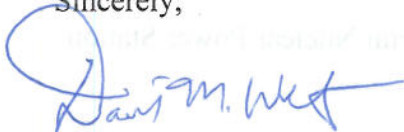
EPA is in receipt of your May 20, 2016 request pursuant to 40 C.F.R. § 124.53(c)(3) to extend the time period for MassDEP to provide the Clean Water Act (CWA) Section 401 Water Quality Certification for NPDES Permit MA0003557 for the Pilgrim Nuclear Power Station. As expressed in EPA's letter of May 16, 2016 to MassDEP, EPA requested certification within 60 days of May 16, 2016, the date the draft permit was sent to MassDEP, in accordance with § 124.53 (c)(3). Our May 16, 2016 letter also noted, in accordance with § 124.53(c)(3), that the State will be deemed to have waived its right to certify unless that right is exercised within this 60-day time period.

In your May 20, 2016 letter, MassDEP notes that § 124.53 (c)(3) allows EPA to extend the time for Section 401 certification, if the Regional Administrator finds that "unusual circumstances" require a longer period, and requests that EPA extend this time until a) "the final permit and response to comments has been duly prepared," and b) "MassDEP has had a chance to review the final permit." Your letter suggests that the "unusual circumstances" warranting an extension in this case are that Massachusetts is not authorized to administer the federal program and that MassDEP must issue similar wastewater discharge permits under state law.

EPA has long accommodated MassDEP's desire to hold off on Section 401 certifications beyond the 60-day period provided in our regulations. While our regulations tie certification to the state's review of a *draft* permit when the state does not certify a permit application, our practice with Massachusetts has generally been to expect a certification only after (1) the draft permit has been through the public comment process, (2) EPA has revised the draft pursuant to public comment, and (3) MassDEP has had three weeks to review an initial version of the revised draft. These extra steps are not included in the regulations, but we have been willing to work with the state to provide this extra time and intend to follow this practice for the Pilgrim permit.

We do not, however, find that the issues cited in your May 20 letter constitute "unusual circumstances" that require the indefinite extension of the regulatory period for certification you seek pursuant to 40 C.F.R. 124.53 (c)(3). These particular circumstances have been in existence for over forty years and apply to all EPA-issued NPDES permits in Massachusetts. We therefore find that the criteria for a regulatory extension of time have not been met, and we deny the request. We reiterate, however, that we plan to follow the procedure described above, which allows the state to provide its certification at the final permit stage. At that time, MassDEP may seek an extension if it believes it needs even more time beyond the three week period at the end of the process to make a certification decision. While we are declining to grant your request, the procedures we have agreed to should satisfy the state's interest in delaying certification until the final stages of the permit process.

Sincerely,



David M. Webster, Manger

Water Permit Branch

cc: George Papadopoulos